ment; 34 per cent. had been dismantled but not crated or prepared for shipment; 44 per cent. had not been dismantled (Tr. 113).

The tax assessment as finally adjusted and paid excluded the 12 per cent. which had been shipped out of the county prior to March 5, 1945, and included only the property still located at the plant site in the County of Merced, State of California.

Although the Bigge Drayage Co. was licensed by the Interstate Commerce Commission as a common carrier in interstate or foreign commerce, it was not employed in this case to perform the functions of a common carrier (Tr. 54). Bigge Drayage Co., though it doubtless performed the functions of a common carrier for other persons in other instances, did not perform the functions of a common carrier in this case. It had the equipment to and did perform the functions of a dismantler. Any other dismantling concern could have performed the same functions even though not a common carrier. Bigge Drayage Co. was not employed to and did not transport the property away from the plant site. All of the services performed by it were performed at the plant site. The common carrier which transported the property away from the plant site was the Atchison, Topeka and Santa Fe Railway Co., and none of the property included in the tax assessment as finally adjusted and paid had been delivered to that railroad company by the first Monday in March (March 5, 1945).

The Supreme Court of California recognized in its opinion that exportation may commence by means other than delivery to a common carrier for transportation. It applied the test expressed by this Court in *Richfield Oil Corp.* v. *State Board of Equalization*, 329 U. S. 69, 79, wherein this Court, in referring to *Coe* v. *Errol*, 116 U. S. 517, declared: "* * * What the Court said concerning commerce is what we deem to be the correct principle gov-

erning exports: 'goods do not cease to be part of the general mass of property in the State, subject, as such, to its jurisdiction, and to taxation in the usual way, until they have been shipped, or entered with a common carrier for transportation to another State, or have been started upon such transportation in a continuous route or journey.' P. 527."

The property here assessed had not been shipped, nor entered with a common carrier for transportation to another state, nor started upon such transportation in a continuous route or journey. Consequently it had not ceased to be part of the general mass of property in the State, subject, as such, to its jurisdiction and to taxation in the usual way.

We believe the question here presented has been foreclosed by the decisions of this Court in *Coe* v. *Errol*, 116 U. S. 517, *Cornell* v. *Coyne*, 192 U. S. 418 and *Richfield Oil Corp.* v. *State Board of Equalization*, 329 U. S. 69.

The trial court, in deciding in favor of the taxpayer, assumed that in *Hughes Bros. Timber Co.* v. *Minnesota*, 272 U. S. 469, only a portion of the logs had been pushed into the stream by tax day and that a portion still remained on the banks of the stream. It construed the decision in the *Hughes* case, therefore, as holding that because some of the logs were moving on tax day, all of them were regarded for purposes of the Commerce Clause as moving in interstate commerce. The record in the *Hughes* case, however, shows that such were not the facts but that on the contrary all of the logs were moving down the stream on their interstate journey on tax day.

We submit that the decisions of this Court relied upon by the California Supreme Court in rendering its decision herein fully support its determination that the taxing statute as here applied does not violate the Import-Export Clause.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 327

EMPRESA SIDERURGICA, S. A., a CORPORATION OF COLOMBIA, SOUTH AMERICA, AND VANDERBURGH & CO., INC., A CALIFORNIA CORPORATION,

Appellants,

vs.

COUNTY OF MERCED, A MUNICIPAL CORPORATION; J. EMMETT McNAMARA, ASSESSOR OF THE COUNTY OF MERCED, ET AL.,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

FRED N. HOWSER,
Attorney General of the State of California;
JAMES E. SABINE,
Deputy Attorney General of the State of California;
GREGORY P. MAUSHART,
District Attorney of the County of Merced,
Counsel for Appellees.

Conclusion

Inasmuch as appellants' contentions concerning alleged violation of the Import-Export Clause have been foreclosed by prior decisions of this Court, we respectfully submit that this appeal should be dismissed or in the alternative that the judgment of the Supreme Court of California should be affirmed.

Respectfully submitted,

FRED N. HOWSER,
Attorney General of the State of California;
JAMES E. SABINE,
Deputy Attorney General of the State of California;
GREGORY P. MAUSHART,
District Attorney of the County of Merced,
Counsel for Appellees.